UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FRONTIER GLASS, the assumed business name of
WINDSHIELDS, INCORPORATED

Plaintiff

COMPLAINT

vs.

Case No.

Brian Harrington
4 Millrace North
Williamsville, NY 14221

Defendant

Plaintiff, by its attorneys, Nesper, Ferber, DiGiacomo, Johnson & Grimm, LLC., Gabriel J. Ferber, Esq., of Counsel, for its complaint against the Defendant alleges, upon information and belief, as follows:

INTRODUCTION

1. This is a claim for unfair competition and false advertising under the Federal Lanham Act and New York State law. For over 30 years, Plaintiff, doing business under the assumed name of Frontier Glass, has provided the highest quality service in connection with the repair of automobile windshields, windows and other glass products at various locations throughout Western New York. Currently, Frontier Glass provides these services at five (5) separate business locations. By continually

offering, advertising and promoting its services, Frontier Glass has developed, in the perception of the public, a strong connection between its "Frontier Glass" business trademark name and its high quality services.

2. Defendant Harrington unlawfully has attempted to trade on the goodwill associated with the Frontier Glass trademark, and has caused likely and actual consumer confusion, by repeatedly and prominently advertising his business as "frontierglassbuffalo.com" on the Internet. Individuals who Google and click the address "frontierglassbuffalo.com" are referred to Defendant's business, which he calls, "Auto Glass Xpress", rather than to Plaintiff, which owns the "Frontier Glass" trademark. Defendant's infringement of Plaintiff's trademark has damaged Plaintiff and consumers by causing confusion between Plaintiff's high quality services and the services offered by the Defendant.

3. Defendant's infringement of Plaintiff's trademark and Defendant's use of false advertising to capture consumers that would otherwise be relying upon the reputation of Frontier Glass, has caused substantial damage to Plaintiff and the consuming public. Defendant's misconduct will continue to confuse and mislead the public unless the conduct is immediately enjoined.

PARTIES

4. Plaintiff, Frontier Glass, is the assumed business name of Windshields, Incorporated which is a New York Corporation with its principal place of business at 1672 Clinton Street, Buffalo, New York 14206.

5. Upon information and belief, Defendant Brian Harrington is a resident of Erie County, NY and a sole proprietor doing business under the name "Auto Glass Xpress".

JURISDICTION AND VENUE

6. This action arises under the unfair competition provisions of the Federal Lanham Act, 15 U.S.C. § 1125(a). This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction over Plaintiff's state law claim pursuant to 18 U.S.C. § 1367.

7. This Court has personal jurisdiction over Defendant because he resides and does business in New York State.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides here.

FACTS

9. Frontier Glass is a family-owned business which has provided glass repair services in the Western New York area since 1966. Business operations began at 72 Walden Avenue, New York, and expanded to five (5) different locations throughout the Buffalo, New York area.

10. Defendant is a former employee of the Plaintiff. Upon information and belief, he started his auto glass business approximately one year ago. Plaintiff has had no objection to Defendant's competition, but now objects only because Defendant is attempting to piggy-back and, effectively, steal the goodwill and work generated by "Frontier Glass'" positive public image in the Buffalo, New York area. If a consumer types in the words "frontierglassbuffalo.com", they are referred to Defendant's business rather than to Plaintiff, Frontier Glass. By purchasing this website address and registering the "frontierglassbuffalo" domain name, a name that is confusingly similar to Plaintiff's trademark, Defendant has acted in bad faith to steal the benefits of the great reputation that the Plaintiff enjoys in the Western New York area.

FIRST CAUSE OF ACTION
(LANHAM ACT UNFAIR COMPETITION)

11. Plaintiff repeats the allegation previously stated in paragraphs 1 through 10 as if fully set forth herein.

12 The services provides by Defendant are of the same general nature and type of the services provided by Plaintiff. Defendant's infringing use of the "frontierglassbuffalo.com" for its website address, has caused confusion among the general public who need glass repair services and is likely to cause additional confusion unless immediately enjoined.

13. Defendant's unlawful and unlicensed use of Plaintiff's trademark creates the express and implied misrepresentation that Defendant's services are authorized or approved by Plaintiff.

14. Defendant's acts of infringement violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and have damaged Plaintiff in an amount to be proven at trial.

SECOND CAUSE OF ACTION
(LANHAM ACT FALSE ADVERTSING)

15. Plaintiff repeats the allegations in paragraphs 1 through 14 as if fully set forth herein.

16. By using the "frontierglassbuffalo.com" website address, Defendant is luring unsuspecting members of the general public to its own services, rather than the services that would otherwise be rendered by Plaintiff.

17. Defendant, through his false advertising and unfair competition have deceived the public and have damaged Plaintiff.

18. Defendant's false advertising violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and has damaged Plaintiff in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(LANHAM ACT CYBERPIRACY)

19. Plaintiff repeats the allegations in paragraphs 1 through 18 as if fully set forth herein.

20, By registering a domain name confusingly similar to plaintiff's trademark, Defendant has sought in bad faith to profit from the value of Plaintiff's trademark.

21. Defendant's act of cyberpiracy violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and (d) and has damaged Plaintiff in an amount to be proven at trial.

FOURTH CAUSE OF ACTION
(NEW YORK UNFAIR COMPETITION)

22.. Plaintiff repeats the allegations in paragraphs 1 through 21 as if fully set forth herein.

23. Defendant's infringing conduct constitutes a bad faith effort to confuse the public and trade on Plaintiff's valuable goodwill in its Frontier Glass trademark.

24. Defendant's conduct constitutes unfair competition under New York law.

25. Defendant has no adequate remedy at law. If Defendant's activities are not enjoined, Plaintiff will continue to suffer irreparable harm and injury to its goodwill and reputation.

WHEREFORE, Plaintiff seeks a judgment of this Court:

1. Finding that Defendant's use of the "frontierglassbuffalo.com" website address infringes on Plaintiff's trademark and otherwise constitutes unfair competition with Plaintiff;

2. Finding that Defendants use of the "frontierglassbuffalo.com" website constitutes false advertising and otherwise constitutes unfair competition with Plaintiff;

3. Enjoining Defendant from further trademark infringement, false advertising cyberpiracy and unfair competition;

4. Awarding Plaintiff its damages from Defendant's conduct in an amount to be proven at trial;

5. Awarding such other and further relief as the court appears just and proper, including Plaintiff's attorney's fees and costs associated with the prosecution of this action.

A JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE.

Dated: April 19, 2017
Buffalo, New York

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